

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

WILLIS MARK HAYNES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil No. PJM 02-3850
(Criminal No. PJM 98-0520)

MEMORANDUM OPINION

I.

Willis Mark Haynes has filed a “Notice of Appeal” [Paper No. 555] seeking to appeal this Court’s Order denying his “Motion for Relief from Operation of July 26, 2006 Opinion Denying 28 U.S.C. 2255 Motion to Vacate, Set Aside, or Correct Sentence, Pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure” [Paper No. 545] (“Rule 60(b)(6) Motion”). On June 28, 2010 the Fourth Circuit issued an Order remanding the case to this Court for the limited purpose of supplementing the record with an order granting or denying a certificate of appealability (“COA”). Accordingly, the Court will treat Haynes’ Notice of Appeal as a Request for COA. The Request is **DENIED** for the reasons stated below.

II.

Following a jury trial, Haynes was convicted of three counts of first-degree murder in violation of 18 U.S.C. § 1111(a), three counts of kidnaping in violation of 18 U.S.C. § 1201(a), and three counts of use of a handgun during a crime of violence in violation of 18 U.S.C. § 924(c)(1). He received concurrent life terms for the first-degree murder and kidnaping counts, and received a forty-five year consecutive sentence for the firearm counts. The Fourth

Circuit affirmed the conviction and sentence, *United States v. Haynes*, 26 F. App'x. 123 (4th Cir. 2001), and the Supreme Court denied certiorari. *United States v. Haynes*, 535 U.S. 979 (2001).

On November 19, 2002, Haynes filed a Motion to Vacate his sentence pursuant to 28. U.S.C. § 2255. On July 26, 2006, the Court denied his Motion because it failed to show constitutionally defective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), did not establish the Government's alleged use of perjured testimony in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), could not demonstrate lack of federal jurisdiction, and offered no new evidence to support a claim of actual innocence. The Fourth Circuit affirmed on October 19, 2007 and denied re-hearing en banc on December 17, 2007.

On January 14, 2010, Haynes, acting *pro se*, filed the Rule 60(b)(6) Motion arguing that the Court's failure to grant him an evidentiary hearing to further develop his prior claims of ineffective assistance of counsel was error and seeking to reopen the underlying § 2255 proceedings. The Motion did not present any new arguments and essentially sought to re-litigate issues that were previously decided by the Court in the underlying § 2255 proceedings. Therefore, the Court denied the Motion on April 12, 2010.

Haynes now brings this Notice of Appeal, which the Court will treat as a Petition for a COA, seeking to appeal the Court's denial of his Rule 60(b)(6) Motion.

III.

To obtain a certificate of appealability under § 2253(c), a petitioner must make a "substantial showing" of a denial of a constitutional right by demonstrating that the "issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." *Lozada v. Deeds*,

498 U.S. 430, 432 (1991) (per curiam) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 4 (1983)). Further, when the district court denies a habeas petition on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Haynes’ Notice of Appeal simply states that he seeks to appeal the Court’s decision denying his Rule 60(b)(6) Motion. He has made no demonstration that reasonable jurists would find that the Court’s decision to deny his rule 60(b)(6) Motion is debatable or wrong. Therefore, Haynes Notice of Appeal, which the Court is treating as a Petition for Certificate of Appealability, is **DENIED**.

A separate Order will issue.

July 21, 2010

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE